SBCivil Writ Petition No.3/1996

Kishna Ram
Vs.
State of Rajasthan & Ors.

Date of Order :: 1st September, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. K.N.Joshi, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Ms. Vanita Joshi, for the respondents.

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By judgment dated 23.3.1971 the Sub Divisional Officer, Bhinmal while accepting a suit for declaration preferred by the petitioner ordered as under:-

> "वादी की ओर से तहसीलदार भीनमाल के फसले का प्रतिवादी व पेश हुए नं. 239, 242, 244, 145, कुल रकबा 77} 3 बीघा पर वादी किशना का कब्जा से 2017 से 2022 होना साबित है व इस अवैध कब्जे बाबत जुर्माना भी हुआ है वह वादी की ओर से गिरदावरी नकल सं. 2013 से 2023 तक भी पेश हुई है जिसमें सं. 2015 से उक्त खसरा नंबरान पर वादी का कब्जा होना पाया जाता है ऐसी स्थिति में वादी के खातेदारी ने करार दिया जाना वाजिब प्रतीत होता है अत: खेत ख.नं. 239/611, 240/1, 241/21 {2, 242/911},243/31 {3,244/1 व 245/4111} 4बीघा सरहद वाके मोदरा का वादा के खातेदारा में करार दिया जाता है तहसीलदार जी भीनमाल को दुरूसती हेतु लिखा जावें डिक्री पर्चा इसी कदर मुरतिब हो दोनों पक्ष खर्चा अपना अपना वहन करें।"

Despite khatedari rights given to the petitioner vide judgment dated 23.3.1971 proceedings under Section 91 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as "the Act of 1956") was initiated and the petitioner was ordered to be dispossessed from the land in question with a recovery of a sum of Rs.9600/- as penalty, however, appeal preferred by the petitioner giving challenge to the order passed under Section 91 of the Act of 1956 and the order passed by Collector, Jalore rejecting the appeal on the ground of limitation came to be accepted by Revenue Appellate Authority, Jodhpur by judgment dated 12.10.1982, relevant portion of that is worth to be noticed:-

> "{4} अपीलाधीन आदेश को पढ़ने से एवं प्रस्तुत रेकार्ड का अवलोकन करने से ये तथ्य प्रकट होते हैं कि सहायक जिलाधीश ने दावा संख्या 74/66 में दिनांक 19-4-68 को अस्थाई निषेधाज्ञा इस अमर की जारी की थी कि विवादग्रस्त भूमि के सम्बन्ध में अपीलार्थी के विरूद्ध धारा 91 की अग्रिम कार्यवाही नहीं की जाए। इसी भूमि को वादी के पक्ष में खातेदारी के अधिकार देने की घोषणा दिनांक 23-3-71 को कर दी गई तथा वह सं0 2012 से खातेदार माना गया। ऐसी स्थिति में धारा 91 राजस्थान भू राजस्व अधिनियम के तहत की गई कार्यवाही एवं उसमें पारित सभी आदेश त्रुटि पूर्ण होने से काबिल निरस्तनीय है।"

In view of factual background above, the land in dispute was entered under the khatedari of the petitioner but the Additional Collector, Jalore by an order dated 30.9.1995 made a reference under Section

232 of the Rajasthan Tenancy Act to cancel the judgment and decree dated 23.3.1971 and also the mutation made in favour of the petitioner in light of judgment referred above. The Additional Collector made the reference under the order dated 30.9.1995 on the count that the land ordered to be mutated in favour of the petitioner is gair mumkin gochar and a path, therefore, it could not be regularised under Section 16 of the Rajasthan Tenancy Act. The reference made by the Additional Collector came to be accepted by learned Board of Revenue under the judgment dated 13.12.1995. Being aggrieved by the same this petition for writ is preferred.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the reference made by the Collector was rightly accepted by Board of Revenue as the land in question is gochar land and is also a part of path that is used by public at large.

In rejoinder, the petitioner has denied the fact that the land is gochar and is also a part of path. A copy of an order dated 1.3.1973 is also placed on record whereby the Assistant Collector, Bhinmal converted the gochar land as a barani land. The petitioner has also placed on record a copy of the notification issued by Government of Rajasthan exercising powers under Section 9(3) of the Land

Acquisition Act, 1894 for acquiring a part of land in question by treating the same as barani land.

The contention of counsel for the petitioner is that the powers under Section 232 of the Rajasthan Tenancy Act has been exercised by the Collector as well as by the Board of Revenue after a lapse of about 25 years and, therefore, the same is arbitrary. To substantiate the contention, reliance is placed by counsel for the petitioner upon a Division Bench judgment of this Court in the case of State of Rajasthan v. Teja & Ors., reported in 2005(2) RLR 357, wherein this Court held as under:-

> "10.In the instant case, while it is true that the subject transfer is in violation of Section 42B of the Act of 1955 but that, in itself, is not sufficient. As the respondent has acquired tenancy/khatedari rights and continued in possession of the land for number of years, his rights cannot be called in question after unreasonable delay in absence of a positive case of fraud on account of collusion between the public officer and the private party. The Collector before invoking the revisional power, has not recorded any reasons to the effect that illegality in transfer as a consequence of fraud between the public officer and the private party has suffered public loss. In our view, the Board of Revenue has committed error in accepting the reference made by the Collector without satisfying the pre-requisites. Learned Single Judge has rightly

> set aside the order of the Board of Revenue following the decision of the Division Bench of this Court in Anandi Lal's case (supra)."

Per contra, it is stated by counsel for the respondents that the judgment referred above is having no application in present controversy as the land in question is a gochar land and is also a part of path, that cannot be regularised in light of Section 16 of the Rajasthan Tenancy Act, as such no error is committed by Board of Revenue in accepting the reference made to it by Collector, Jalore.

Heard counsel for the parties.

It is not at all in dispute that mutation of the land in dispute was made in favour of the petitioner in pursuant to the judgment dated 23.3.1971. The respondents acted upon the judgment and changed the character of the land from gochar to barani in the year 1973 itself. No action was taken by the respondents upto 1995, i.e. for a period of about 24 years from the date of judgment passed by the Sub Divisional Officer declaring the petitioner khatedar of the land in dispute. Once the respondents accepted the judgment and acted upon that to the extent that the character of the land was also changed, then there is no reason to get the judgment and decree dated 23.3.1971 cancelled after a lapse of about 25 years. It is pertinent to note that on the day the reference

was made the land in question was neither gochar nor was a part of a path and as such the foundation for making reference under Section 232 of the Rajasthan Tenancy Act was not available. In the circumstances above the law laid down by Division Bench of this Court in the case of State of Rajasthan v. Teja & Ors. (supra) is having absolute application in present controversy.

Accordingly, this petition for writ is allowed. The judgment impugned dated 13.12.1995 passed by Board of Revenue, Rajasthan, Ajmer is quashed and the judgment dated 23.3.1971 passed by Sub Divisional Officer, Bhinmal is restored.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.